



[7590-01-P]

**NUCLEAR REGULATORY COMMISSION**

**10 CFR Part 70**

**NRC-2010-0271**

**RIN 3150-AJ34**

**Domestic Licensing of Special Nuclear Material –**

**Written Reports and Clarifying Amendments**

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Direct final rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is amending its regulations related to reportable safety events involving special nuclear material. This rule increases the time licensees are allowed to submit a written follow-up report from within 30 days to within 60 days after the initial report of an event, updates the reporting framework for certain situations, and removes redundant reporting requirements. These amendments affect a licensee or an applicant that is, or plans to be, authorized to possess greater than a critical mass of special nuclear material. This action resulted from a petition for rulemaking (PRM) received by the NRC (PRM-70-8). As a result of this direct final rule, the NRC's "FCSS [Fuel Cycle Safety and Safeguards] Interim Staff Guidance-12, Revision 1, 10 CFR [Title 10 of the *Code of Federal Regulations*] Part 70 – Reportable Safety Events" contains minor editorial updates that reflect the amendments.

**DATES:** This final rule is effective **[INSERT DATE 120 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, unless a significant adverse comment is received by **[INSERT**

**DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER***]. If the direct final rule is withdrawn as a result of such comments, timely notice of the withdrawal will be published in the *Federal Register*. Comments received after this date will be considered if it is practical to do so, but the NRC staff is able to ensure consideration only for comments received on or before this date.

**ADDRESSES:** Please refer to Docket ID NRC-2010-0271 when contacting the NRC about the availability of information for this final rule. You may access publicly-available information related to this final rule by any of the following methods:

- **Federal Rulemaking Web Site:** Go to <http://www.regulations.gov> and search for Docket ID NRC-2010-0271. Address questions about NRC dockets to Carol Gallagher; telephone: 301-287-3422; e-mail: [Carol.Gallagher@nrc.gov](mailto:Carol.Gallagher@nrc.gov). For technical questions, contact the individual listed in the FOR FURTHER INFORMATION CONTACT section of this final rule.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly available documents online in the ADAMS Public Documents collection at <http://www.nrc.gov/reading-rm/adams.html>. To begin the search, select "ADAMS Public Documents" and then select "[Begin Web-based ADAMS Search.](#)" For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr.resource@nrc.gov](mailto:pdr.resource@nrc.gov). The ADAMS accession number for each document referenced in this document (if that document is available in ADAMS) is provided the first time that a document is referenced. The NRC's "FCSS Interim Staff Guidance-12, Revision 1, 10 CFR Part 70, Appendix A – Reportable Safety Events" will be available in the NRC's ADAMS (ML14157A067).

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

**FOR FURTHER INFORMATION CONTACT:** Keith McDaniel, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001; telephone: 301-415-5252; e-mail: [Keith.McDaniel@nrc.gov](mailto:Keith.McDaniel@nrc.gov).

## **SUPPLEMENTARY INFORMATION:**

### **TABLE OF CONTENTS:**

- I. Procedural Background.
- II. Background.
- III. Discussion.
- IV. Section-by-Section Analysis.
- V. Regulatory Flexibility Certification.
- VI. Regulatory Analysis.
- VII. Backfitting and Issue Finality.
- VIII. Plain Writing.
- IX. Environmental Impact: Categorical Exclusion.
- X. Paperwork Reduction Act Statement.
- XI. Congressional Review Act.
- XII. Compatibility of Agreement State Regulations.
- XIII. Voluntary Consensus Standards

## **I. Procedural Background.**

Because the NRC considers this action to be non-controversial, the NRC is using the “direct final rule process” for this rule. The amendment to the rule will become effective on **[INSERT DATE 120 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**. However, if the NRC receives a significant adverse comment on this direct final rule by **[INSERT DATE 30 DAYS AFTER PUBLICATION IN THE *FEDERAL REGISTER*]**, then the NRC will publish a document that withdraws this action and will subsequently address the comments received in a final rule as a response to the companion proposed rule published in the Proposed Rule section of this issue of the *Federal Register*. Absent significant modifications to the proposed revisions requiring republication, the NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule’s underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when:

a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

2) The comment proposes a change or an addition to the rule, and it is apparent that the

rule would be ineffective or unacceptable without incorporation of the change or addition.

3) The comment causes the NRC staff to make a change (other than editorial) to the rule.

For detailed instructions on filing comments, please see the companion proposed rule published in the Proposed Rule section of this issue of the *Federal Register*.

## **II. Background.**

This rulemaking resulted from a petition for rulemaking (PRM-70-8, ADAMS Accession No. ML091110449), dated April 16, 2009, filed by the Nuclear Energy Institute (the petitioner). The petitioner requested that the NRC amend its regulations to clarify safety event reporting requirements in appendix A of part 70 of Title 10 of the *Code of Federal Regulations* (10 CFR). The NRC published the notice of resolution and closure of the petition in the *Federal Register* on October 18, 2010, (75 FR 63725) informing the public that the NRC would consider five of the nine issues raised in the petition in the rulemaking process. One of the five issues was addressed in a miscellaneous administrative rulemaking that was published November 30, 2010, (75 FR 73935). The remaining four issues are the subject of this rulemaking.

## **III. Discussion.**

This rulemaking addresses four issues that were raised in PRM-70-8 regarding changes to appendix A to 10 CFR part 70. Paragraph (a) of appendix A lists five events that must be reported to the NRC Operations Center within 1 hour of discovery. Paragraph (b) of appendix A lists five events that must be reported to the NRC Operations Center within 24 hours of discovery.

Two issues involve revising the number of days that are allowed for a licensee to submit the written follow-up report from within 30 days to within 60 days after the initial report of an event. The third issue involves removing paragraph (b)(5) of appendix A on the grounds that it is redundant to the requirements in paragraph (b)(1) of appendix A. The final issue involves removing the reporting requirements in paragraph (a)(5) of appendix A. The NRC's "FCSS Interim Staff Guidance-12, Revision 1, 10 CFR Part 70, Appendix A – Reportable Safety Events" will have minor editorial updates to reflect the amendments. The updated document will be available in ADAMS (Accession No. ML14157A067).

The criteria for reporting 1-hour and 24-hour events, and the criteria for the 30-day follow-up written reports, were developed as part of a larger revision to 10 CFR part 70 in 2000. That rulemaking established subpart H of part 70, which includes the 10 CFR 70.61 performance requirements for identifying an item relied on for safety (IROFS), and the submittal of an Integrated Safety Analysis Summary (ISAS) for NRC's review. Lessons learned from industry and from reports the NRC has received since 2000 have shown that the written follow-up reports can be received within 60 days after the initial report of an event without weakening the performance requirements. Extending the time allowed to submit the written follow-up reports provides an opportunity for a licensee to complete a more thorough investigation without compromising the timely implementation of corrective actions. This change does not impact safety to the public, the environment, or to the workers. The requirement to notify the NRC Operations Center within 1 hour or 24 hours, as appropriate, after discovery of specified events, remains unchanged.

The NRC is removing paragraph (b)(5) of appendix A to 10 CFR part 70 because its requirements are redundant to the requirements in paragraph (b)(1) of the same appendix. Removing the paragraph thus does not weaken these performance requirements, or otherwise impact safety to the public, the environment, or the workers.

The NRC is also removing paragraph (a)(5) of appendix A to 10 CFR part 70 because this provision is not risk-informed and is overly restrictive. This requirement specifies that, within 1 hour of discovery, licensees must report any loss of controls that leave only one IROFS, as documented in the ISAS, available and reliable to prevent a nuclear criticality accident. Paragraph (a)(5) further specifies that it is applicable only when this situation has lasted for more than 8 hours.

In the majority of the events reported and reviewed under paragraph (a)(5) since 2000, such an event would be reported within 24 hours under paragraph (b)(2), if it involves a loss or degradation of IROFS resulting in a failure to meet the performance requirements. Other events now captured by paragraph (a)(5) would be of relatively low safety significance if compliance with the performance requirements was maintained. Also, paragraph (a)(5) may require reporting of conditions that are equivalent to what is allowed by design.

Additionally, the reporting requirement in paragraph (a)(5), as explained in the 1999 statement of considerations for the proposed rule establishing subpart H of part 70, was “...intended to replace and expand on the approach licensees have [used] for reporting criticality events under [NRC] Bulletin 91-01” (64 FR 41349), July 30, 1999. The NRC’s Bulletin 91-01 was based on reporting a loss of double contingency protection. However, controls used to meet the double contingency principle (DCP) are not necessarily IROFS, and there is no requirement that these controls be designated as IROFS. Also, having more than one control is not necessarily required to meet the DCP. Thus, having only one IROFS remaining in a criticality sequence does not necessarily constitute a state in which double contingency protection is not maintained.

Based on the discussion above, the NRC believes that paragraph (a)(5) of appendix A may be removed without weakening the performance requirements or impacting safety to the public, the environment, or to the workers.

#### **IV. Section-by-Section Analysis.**

The following paragraphs describe the specific changes proposed by this rulemaking.

##### **Reporting requirements (§ 70.50).**

Paragraph (c)(2) is amended to remove references to § 70.74 and appendix A because of changes made to § 70.74 as related to the time for a licensee to submit a written report following a reportable event.

##### **Additional reporting requirements (§ 70.74).**

Paragraph (b) is amended to change the time for a licensee to submit a written report following a reportable event described in appendix A from within 30 days to within 60 days. Clarifications for where to send the follow-up report as well as, the information contained in the report, are also added.

##### **Reportable Safety Events (Appendix A to Part 70)**

Paragraph (a) is amended by changing the time for a licensee to submit a written report following a reportable event from within 30 days to within 60 days.

*Paragraph (a)(5)* is deleted as it is not needed.

*Paragraph (b)* is amended by changing the time for a licensee to submit a written report following a reportable event from within 30 days to within 60 days.



*Paragraph (b)(5)* is deleted because it is redundant to the reporting requirements in paragraph (b)(1) of appendix A.

## **V. Regulatory Flexibility Certification.**

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the NRC certifies that this direct final rule does not have a significant economic impact on a substantial number of small entities. This direct final rule affects only the licensing and operation of facilities under subpart H of 10 CFR part 70. The companies that own these plants do not fall within the scope of the definition of “small entities” set forth in the Regulatory Flexibility Act or the size standards established by the NRC (10 CFR 2.810).

## **VI. Regulatory Analysis.**

A regulatory analysis has not been prepared for this direct final rule because this rule is considered a minor non-substantive amendment and has no economic impact on NRC licensees or the public.

## **VII. Backfitting and Issue Finality.**

The NRC has determined that the NRC’s backfitting and issue finality regulations in 10 CFR 50.109, 70.76, 72.62, 76.76, and in 10 CFR part 52, do not apply to this direct final rule because this amendment would not involve any provisions that are subject to these backfitting and issue finality provisions. The direct final rule addresses changes in the reporting requirements for a licensee under subpart H of 10 CFR part 70. Information collection and

reporting requirements are not subject to the NRC's backfitting and issue finality regulations. Further, as stated above, lessons learned from industry and from reports the NRC has received since 2000 have shown that the written follow-up reports can be received within 60 days – rather than the currently-required 30 days – after the initial report of an event, without adversely impacting safety. This change is a voluntary relaxation of NRC requirements and is accordingly not subject to the NRC's backfitting and issue finality regulations.

### **VIII. Plain Writing**

The Plain Writing Act of 2010 (Pub. L. 111-274) requires Federal agencies to write documents in a clear, concise, and well-organized manner. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, "Plain Language in Government Writing," published June 10, 1998 (63 FR 31883).

### **IX. Environmental Impact: Categorical Exclusion**

The NRC has determined that this direct final rule is the type of action that falls within the categorical exclusion described in 10 CFR 51.22(c)(2). The amendments to part 70 are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations, and are actions on a petition for rulemaking relating to these amendments. Therefore, neither an environmental impact statement nor environmental assessment has been prepared for this final rule.

## **X. Paperwork Reduction Act Statement**

The burden to the public for these information collections is neither increased nor decreased due to the rule changes; rather, the time frame for a licensee to submit a written follow-up report for a part 70 reportable safety event has changed from within 30 days to within 60 days. In addition, information collections in part 70, Appendix A(a)(5) and (b)(5) are deleted because they are no longer needed or are redundant with other part 70, Appendix A reporting requirements. Further information about information collection requirements associated with this direct final rule can be found in the companion proposed rule published elsewhere in this issue of the *Federal Register*.

This direct final rule is being issued prior to approval by the Office of Management and Budget (OMB) of these information collection requirements, which were submitted under OMB control number 3150-0009. When OMB notifies us of its decision, we will publish a document in the *Federal Register* providing notice of the effective date of the information collections or, if approval is denied, providing notice of what action we plan to take.

Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the FOIA [Freedom of Information Act], Privacy, and Information Collections Branch (T-5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by email to [INFOCOLLECTS.RESOURCE@NRC.GOV](mailto:INFOCOLLECTS.RESOURCE@NRC.GOV); and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202, (3150-0009), Office of Management and Budget, Washington, DC 20503.

## **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection request unless the requesting document displays a currently valid OMB control number.

## **XI. Congressional Review Act**

In accordance with the Congressional Review Act of 1996 (5 U.S.C. 801-808), the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

## **XII. Agreement State Compatibility**

Under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs” approved by the Commission on June 30, 1997, and published in the *Federal Register* (62 FR 46517; September 3, 1997), this direct final rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States and NRC requirements. The NRC staff analyzed the rule in accordance with the procedure established within Part III, “Categorization Process for NRC Program Elements,” of Handbook 5.9 to Management Directive 5.9, “Adequacy and Compatibility of Agreement State Programs” (a copy of which may be viewed at <http://www.nrc.gov/reading-rm/doc-collections/management-directives/>). The Agreement States have 3 years from the effective date of the final rule in the *Federal Register* to adopt compatible regulations.

The NRC program elements (including regulations) are placed into four compatibility categories (See the Compatibility Table for Direct Final Rule in this section). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely by the NRC. Compatibility Category A contains those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B contains those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Category B program elements in an essentially identical manner. Compatibility Category C contains those program elements that do not meet the criteria of Category A or B, but provide the essential objectives, which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Category C program elements. Compatibility Category D contains those program elements that do not meet any of the criteria of Categories A, B, or C, and thus do not need to be adopted by the Agreement States for purposes of compatibility.

The Health and Safety (H&S) category contains program elements that are not required for compatibility but are identified as having a particular health and safety role (i.e., adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of NRC program elements because of particular health and safety considerations. Compatibility Category NRC are those program elements that address areas of regulation that cannot be relinquished to the Agreement States under the Atomic

Energy Act, as amended, or provisions of 10 CFR. These program elements are not adopted by the Agreement States. The following table lists the parts and sections that would be revised and their corresponding categorization under the “Policy Statement on Adequacy and Compatibility of Agreement State Programs.”

**Compatibility Table for Direct Final Rule**

Section	Change	Subject	Compatibility	
			Existing	New
70.50(c)(2)	Amend	Reporting requirements	C	C
70.74(b)	Amend	Additional reporting requirements	NRC	NRC
Appendix A	Amend	Reportable safety events	*	NRC

\*Appendix A compatibility was not previously designated. As it is directly related to § 70.74 it is now designated as NRC.

### **XIII. Voluntary Consensus Standards**

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104-113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this direct final rule, the NRC will revise the time allowed to submit a written follow-up report from within 30 days to within 60 days after the initial report of an event, change the reporting framework for certain situations, and remove redundant reporting requirements. This action does not constitute the establishment of a standard that establishes generally applicable requirements.

## **List of Subjects in 10 CFR Part 70**

Criminal penalties, Hazardous materials transportation, Material control and accounting, Nuclear materials, Packaging and containers, Radiation protection, Reporting and recordkeeping requirements, Scientific equipment, Security measures, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR Part 70.

### **PART 70 - DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL**

1. The authority citation for part 70 continues to read as follows:

**Authority:** Atomic Energy Act secs. 51, 53, 161, 182, 183, 193, 223, 234 (42 U.S.C. 2071, 2073, 2201, 2232, 2233, 2243, 2273, 2282, 2297f); secs. 201, 202, 204, 206, 211 (42 U.S.C. 5841, 5842, 5845, 5846, 5851); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. No. 109-58, 119 Stat. 194 (2005).

Sections 70.1(c) and 70.20a(b) also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

Section 70.21(g) also issued under Atomic Energy Act sec. 122 (42 U.S.C. 2152).  
Section 70.31 also issued under Atomic Energy Act sec. 57(d) (42 U.S.C. 2077(d)). Sections 70.36 and 70.44 also issued under Atomic Energy Act sec. 184 (42 U.S.C. 2234). Section 70.81 also issued under Atomic Energy Act secs. 186, 187 (42 U.S.C. 2236, 2237). Section 70.82 also issued under Atomic Energy Act sec. 108 (42 U.S.C. 2138).

2. In § 70.50, revise the first sentence of the introductory text of paragraph (c)(2) to read as follows:

**§ 70.50 Reporting requirements.**

\* \* \* \* \*

(c) \* \* \*

(2) *Written report.* Each licensee that makes a report required by paragraph (a) or (b) of this section shall submit a written follow-up report within 30 days of the initial report. \* \* \*

\* \* \* \* \*

3. In § 70.74, revise paragraph (b) to read as follows:

**§ 70.74 Additional reporting requirements.**

\* \* \* \* \*

(b) *Written reports.* Each licensee that makes a report required by paragraph (a)(1) of this section shall submit a written follow-up report within 60 days of the initial report. The written report must be sent to the NRC's Document Control Desk, using an appropriate method listed in § 70.5(a), with a copy to the appropriate NRC regional office listed in appendix D to part 20 of this chapter. The reports must include the information as described in § 70.50(c)(2)(i) through (iv).



## **Appendix A to Part 70— [Amended]**

4. Amend appendix A to part 70 by:

a. In the introductory text to paragraph (a), removing the number “30” and adding, in its place, the number “60”;

b. Removing paragraph (a)(5);

c. In the introductory text to paragraph (b), removing the number “30” and adding, in its place, the number “60”; and

d. Removing paragraph (b)(5).

Dated at Rockville, Maryland, this 15<sup>th</sup> day of September, 2014.

For the Nuclear Regulatory Commission.

Mark A. Satorius,  
Executive Director for Operations.

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